

ASSEMBLY BILL

No. 228

Introduced by Assembly Members Gloria and Chiu

January 26, 2017

An act to amend Section 1739.7 of the Civil Code, relating to collectibles.

LEGISLATIVE COUNSEL’S DIGEST

AB 228, as introduced, Gloria. Collectibles: sale of autographed memorabilia.

Existing law regulates the sale or offer to sell by a dealer to a consumer of a collectible in or from this state, as specified. Existing law defines the term “collectible” to mean any autographed item, as specified, sold or offered for sale in or from this state by a dealer, to a consumer for \$5 or more. Existing law defines a “dealer,” among other things, as a person who is principally in the business of selling or offering for sale collectibles in or from this state or a person who by his or her occupation holds himself or herself out as having knowledge or skill peculiar to collectibles.

This bill would define “principally” to mean that a majority of the number of inventory items offered or sold by a dealer are collectibles. The bill also would amend the definition of a dealer to be, among other things, a person who is principally in the business of selling collectibles and who also holds himself or herself out as having knowledge or skill peculiar to collectibles.

Existing law requires a dealer to provide a certificate of authenticity for each collectible to, among other things, indicate to a buyer whether a collectible item was purchased from a 3rd party and if so, the name and address of the 3rd party.

This bill, would instead, require a dealer, for items obtained on and after January 1, 2018, separate from the certificate of authenticity, to maintain a record stating whether the item was purchased by the dealer from a 3rd party and the name and address of the 3rd party. The bill would authorize this information to be disclosed by court order, as specified.

Existing law provides that a consumer who is injured by a failure of the dealer to provide a certificate of authenticity is entitled to recover from that dealer, among other things, 10 times his or her actual damages.

This bill, would instead, require that a dealer be knowingly willful or negligent in failing to provide the certificate of authenticity in order for the penalties to apply.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1739.7 of the Civil Code is amended to
2 read:
3 1739.7. (a) As used in this section:
4 (1) “Autographed” means bearing the actual signature of a
5 personality signed by that individual’s own hand.
6 (2) “Collectible” means an autographed item sold or offered for
7 sale in or from this state by a dealer to a consumer for five dollars
8 (\$5) or more.
9 (3) “Consumer” means any natural person who purchases a
10 collectible from a dealer for personal, family, or household
11 purposes. “Consumer” also includes a prospective purchaser
12 meeting these criteria.
13 (4) (A) “Dealer” means a person who is principally in the
14 business of selling or offering for sale collectibles in or from this
15 state, exclusively or nonexclusively, ~~or~~ and a person who by his
16 or her occupation holds himself or herself out as having knowledge
17 or skill peculiar to collectibles, or to whom that knowledge or skill
18 may be attributed by his or her employment of an agent or other
19 intermediary that by his or her occupation holds himself or herself
20 out as having that knowledge or skill. “Dealer” includes an
21 auctioneer who sells collectibles at a public auction, and also
22 includes persons who are consignors or representatives or agents
23 of auctioneers. “Dealer” includes a person engaged in a mail order,

1 telephone order, online, or cable television business for the sale
2 of collectibles.

3 (B) “Dealer” does not include any of the following:

4 (i) A pawnbroker licensed pursuant to Chapter 3 (commencing
5 with Section 21300) of Division 8 of the Financial Code, if the
6 collectible was acquired through a foreclosure on a collateral loan,
7 provided that the pawnbroker does not hold himself or herself out
8 as having knowledge or skill peculiar to collectibles.

9 (ii) The personality who signs the memorabilia.

10 (iii) A provider or operator of an online marketplace, provided
11 that the online marketplace provider or operator is not principally
12 in the business of selling, or offering for sale, collectibles, in or
13 from the state, exclusively or nonexclusively, or does not hold
14 itself out as having knowledge or skill peculiar to collectibles.

15 (5) “Description” means any of the following:

16 (A) Any representation in writing, including, but not limited to,
17 a representation in an advertisement, brochure, catalog, flyer,
18 invoice, sign, Internet Web page, email, or other commercial or
19 promotional material.

20 (B) Any oral representation.

21 (C) Any representation included in a radio or television
22 broadcast or online communication to the public in or from this
23 state.

24 (6) “Limited edition” means any collectible that meets all of
25 the following requirements:

26 (A) A company has produced a specific quantity of a collectible
27 and placed it on the open market.

28 (B) The producer of the collectible has posted a notice, at its
29 primary place of business, that it will provide any consumer, upon
30 request, with a copy of a notice that states the exact number of a
31 collectible produced in that series of limited editions.

32 (C) The producer makes available, upon request of a consumer,
33 evidence that the electronic encoding, films, molds, or plates used
34 to create the collectible have been destroyed after the specified
35 number of collectibles have been produced.

36 (D) The sequence number of the collectible and the number of
37 the total quantity produced in the limited edition are printed on
38 the collectible.

1 (7) “Mint condition” means any collectible sold on the open
2 market or through a private transaction that meets all of the
3 following requirements:

4 (A) The item has never been circulated, used, or worn.

5 (B) The item exhibits little or no sign of aging or degradation
6 caused by oxidation or exposure to sunlight as a result of its
7 display.

8 (C) The item is otherwise free from creases, blemishes, or marks.

9 (8) “Promoter” means a person who arranges, holds, organizes,
10 or presents a trade show featuring collectibles, autograph signings,
11 or both.

12 (9) “Person” means any natural person, partnership, corporation,
13 limited liability company, company, trust, association, or other
14 entity, however organized.

15 (10) “*Principally*” means that a majority of the number of
16 inventory items offered or sold by a dealer are collectibles.

17 (b) Whenever a dealer, in selling or offering to sell to a
18 consumer a collectible in or from this state, provides a description
19 of that collectible as being autographed, the dealer shall furnish a
20 certificate of authenticity to the consumer at the time of sale. The
21 certificate of authenticity shall be in writing, shall be signed by
22 the dealer or his or her authorized agent, and shall specify the date
23 of sale. The certificate of authenticity shall be in at least 10-point
24 boldface type and shall contain the dealer’s true legal name and
25 street address. The dealer shall retain a copy of the certificate of
26 authenticity for not less than seven years. Each certificate of
27 authenticity shall do all of the following:

28 (1) Describe the collectible and specify the name of the
29 personality who autographed it.

30 (2) Either specify the purchase price and date of sale or be
31 accompanied by a separate invoice setting forth that information.

32 (3) Contain an express warranty, which shall be conclusively
33 presumed to be part of the bargain, of the authenticity of the
34 collectible. This warranty shall not be negated or limited by reason
35 of the lack of words such as “warranty” or “guarantee” or because
36 the dealer does not have a specific intent or authorization to make
37 the warranty or because any statement relevant to the collectible
38 is or purports to be, or is capable of being, merely the dealer’s
39 opinion.

1 (4) Specify whether the collectible is offered as one of a limited
2 edition and, if so, specify (A) how the collectible and edition are
3 numbered and (B) the size of the edition and the size of any prior
4 or anticipated future edition, if known. If the size of the edition
5 and the size of any prior or anticipated future edition is not known,
6 the certificate shall contain an explicit statement to that effect.

7 (5) Indicate whether the dealer is surety bonded or is otherwise
8 insured to protect the consumer against errors and omissions of
9 the dealer and, if bonded or insured, provide proof thereof.

10 (6) Indicate the last four digits of the dealer's ~~resale certificate~~
11 *seller's permit* number from the State Board of Equalization.

12 (7) Indicate whether the item was autographed in the presence
13 of the dealer and specify the date and location of, and the name of
14 a witness to, the autograph signing.

15 ~~(8) Indicate whether the item was obtained or purchased from~~
16 ~~a third party. If so, indicate the name and address of this third~~
17 ~~party.~~

18 ~~(9)~~

19 (8) Include an identifying serial number that corresponds to an
20 identifying number printed on the collectible item, if any. The
21 serial number shall also be printed on the sales receipt. If the sales
22 receipt is printed electronically, the dealer may manually write the
23 serial number on the receipt.

24 *(c) Separate from the certificate of authenticity, whenever selling*
25 *or offering to sell an autographed collectible in or from the state*
26 *that was obtained by the dealer on or after January 1, 2018, the*
27 *dealer shall maintain a record stating whether the item was*
28 *purchased by the dealer from a third party and the name and*
29 *address of the third party. This third-party information may be*
30 *disclosed in the event of a civil dispute pursuant to a court order,*
31 *subject to the privacy protections under Section 1798.90.*

32 ~~(e)~~

33 (d) A dealer shall not represent an item as a collectible if it was
34 not autographed by the personality in his or her own hand.

35 ~~(d)~~

36 (e) No dealer shall display or offer for sale a collectible in this
37 state unless, at the location where the collectible is offered for sale
38 and in close proximity to the collectible merchandise, there is a
39 conspicuous sign that reads as follows:

1 “SALE OF AUTOGRAPHED MEMORABILIA: AS REQUIRED
2 BY LAW, A DEALER WHO SELLS TO A CONSUMER ANY
3 MEMORABILIA DESCRIBED AS BEING AUTOGRAPHED
4 MUST PROVIDE A WRITTEN CERTIFICATE OF
5 AUTHENTICITY AT THE TIME OF SALE. THIS DEALER
6 MAY BE SURETY BONDED OR OTHERWISE INSURED TO
7 ENSURE THE AUTHENTICITY OF ANY COLLECTIBLE
8 SOLD BY THIS DEALER.”

9 (e)

10 (f) Any dealer engaged in a mail-order, telephone-order, or
11 online business for the sale of collectibles in or from this state:

12 (1) Shall include the disclosure specified in subdivision (d), in
13 type of conspicuous size, in any written advertisement relating to
14 a collectible.

15 (2) Shall include in each television or online advertisement
16 relating to a collectible the following written on-screen message,
17 which shall be prominently displayed, easily readable, and clearly
18 visible for no less than five seconds, and which shall be repeated
19 for five seconds once during each four-minute segment of the
20 advertisement following the initial four minutes:

21 “A written certificate of authenticity is provided with each
22 autographed collectible, as required by law. This dealer may be
23 surety bonded or otherwise insured to ensure the authenticity of
24 any collectible sold by this dealer.”

25 (3) Shall include as part of the oral message of each radio
26 advertisement for a collectible the disclosure specified in
27 subdivision (d).

28 (f)

29 (g) No dealer shall display or offer for sale a collectible in this
30 state at any trade show or similar event primarily featuring sales
31 of collectibles or other memorabilia that offers onsite admission
32 ticket sales unless, at each onsite location where admission tickets
33 are sold, there is prominently displayed a specimen example of a
34 certificate of authenticity.

35 (g)

36 (h) Any consumer injured by ~~the failure of a dealer to provide~~
37 ~~a certificate of authenticity containing the information required by~~
38 ~~this section, or by a dealer’s knowingly willful or negligent~~
39 ~~furnishing of a certificate of authenticity that is false, shall be~~
40 entitled to recover, in addition to actual damages, a civil penalty

1 in an amount equal to 10 times actual damages, plus court costs,
2 reasonable attorney's fees, interest, and expert witness fees, if
3 applicable, incurred by the consumer in the action. The court, in
4 its discretion, may award additional damages based on the
5 egregiousness of the dealer's conduct. The remedy specified in
6 this section is in addition to, and not in lieu of, any other remedy
7 that may be provided by law.

8 ~~(h)~~

9 (i) No person shall represent himself or herself as a dealer in
10 this state unless he or she possesses a valid resale certificate
11 number from the State Board of Equalization.

12 ~~(i)~~

13 (j) A dealer may be surety bonded or otherwise insured for
14 purposes of indemnification against errors and omissions arising
15 from the authentication, sale, or resale of collectibles.

16 ~~(j)~~

17 (k) Whenever a promoter arranges or organizes a trade show
18 featuring collectibles and autograph signings, the promoter shall
19 notify, in writing, any dealer who has agreed to purchase or rent
20 space in this trade show what the promoter will do if any laws of
21 this state are violated, including the fact that law enforcement
22 officials will be contacted when those laws are violated. This notice
23 shall be delivered to the dealer, at his or her registered place of
24 business, at the time the agreement to purchase space in the trade
25 show is made. The following language shall be included in each
26 notice:

27 "As a vendor at this collectibles trade show, you are a
28 professional representative of this hobby. As a result, you will be
29 required to follow the laws of this state, including laws regarding
30 the sale and display of collectibles, as defined in Section 1739.7
31 of the Civil Code, forged and counterfeit collectibles and
32 autographs, and mint and limited edition collectibles. If you do
33 not obey the laws, you may be evicted from this trade show, be
34 reported to law enforcement, and be held liable for a civil penalty
35 of 10 times the amount of damages."

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